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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD PAUL TARQUINI, RICHARD LOUIS SCHERTZ,
and GEORGE SIMON GALES

Appeal 2007-4499
Application 10/001,728
Technology Center 2100

Decided: March 24, 2008

Before JAMES D. THOMAS, ALLEN R. MACDONALD, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-13. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. INVENTION

1 The invention at issue involves intrusion detection in a network (Spec. 1). In particular, an intrusion detection application stored in a memory module of a mobile device is executed at a node in a network (*id.* 8). A signature file is transmitted from a management node to other nodes in the network (*id.* 15-16).

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A mobile device operable in a mobile telecommunications network, comprising:

a memory module for storing data in machine readable format for retrieval and execution by a central processing unit; and

an operating system operable to execute an intrusion detection application stored in the memory module.

C. REJECTIONS

Claims 1 and 3-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,725,377 (“Kouznetsov”). Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kouznetsov and U.S. Patent No. 6,851,061 (“Holland”). Claims 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Holland and U.S. Patent No. 5,557,742 (“Smaha”).

II. CLAIM GROUPING

1 “When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(vii) (2005).¹

Appellants argue claims 1 and 3-10 as a first group (App. Br. 5-6) and claims 11-13 as a second group (*id.* 7-9). Appellants argue claim 2 separately. We select claim 1 as the sole claim on which to decide the appeal of the first group and claim 11 as the sole claim on which to decide the appeal of the second group. We consider claim 2 separately.

III. CLAIMS 1 AND 3-10

As set forth above, we select claim 1 as the sole claim on which to decide the appeal of the first group. “Rather than reiterate the positions of parties *in toto*, we focus on the issue therebetween.” *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007).

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

Appellants argue that Kouznetsov “does not disclose . . . ‘an intrusion detection application stored in a memory module’ of a ‘mobile device operable in a mobile telecommunications network’ as recited by independent Claim 1” (App. Br. 5).

The Examiner finds that “**any type of computer on which the software program** (of Kouznetsov) **is loaded** meets the limitation of portable device” (Ans. 12). In the absence of an explicit definition of “mobile device” in the specification, we adopt a plain and ordinary definition as “any device that is mobile.” *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1373 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say). We further adopt the reasonably broad, plain and ordinary meaning of “mobile” to include “able to move freely.” “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). Based on the record before us, we agree with the Examiner that Kouznetsov discloses a “mobile device” according to the plain meaning of the term. For example, Kouznetsov discloses that a server is “any type of computer on which the software program is loaded.” We find that “any type of computer” includes computing devices that are able to be moved freely (i.e., “mobile”), such as laptop computers. We are therefore unconvinced by Appellants’ argument.

Appellants further assert that “the recitation of ‘mobile device’ in the preamble clearly constitutes a structural limitation” (Reply Br. 3) and that “the preamble of independent Claim 1 forms a basis for distinguishing over the *Kousznetsov* reference and, as such, is a claim limitation” (App. Br. 6).

The preamble of claim 1 recites “a mobile device operable in a mobile telecommunications network.” Independently of the preamble, the structure of the device is completely defined in the body of the claim as comprising a memory module and an operating system. Also, the body of claim 1 does not recite any structural limitations associated with the mobile device in the mobile telecommunications network recited in the preamble. Because the body of the claim recites a self-contained description of the structure that does not depend on the preamble for completeness, we agree with the Examiner that the preamble does not constitute a limitation upon structure. “The preamble has been denied the effect of a limitation where the claim or count was drawn to a structure and the portion of the claim following the preamble was a self-contained description of the structure not depending for completeness upon the introductory clause.” *Kropa v. Robie et al.*, 187 F.2d 150, 152 (CCPA 1951).

In addition, claim 1 recites in the preamble that the mobile device is “operable in a mobile telecommunications network.” Because claim 1 is a structural claim of a device that recites no more than the capability of being “operable” in a network, we agree with the Examiner that the device of claim 1 must be tested according to the structure defined in claim 1 and not

by the use which is to be made of the device. As set forth *supra*, the body of claim 1 recites that the device comprises a memory module and an operating system, neither of which depends on the preamble. Thus, we find that the recitation of “operable in a mobile telecommunications network” in the preamble of claim 1 does not constitute a limitation on structure. *In re Casey*, 370 F.2d 576 (CCPA 1967) (“Preambles are used primarily to give the field within which the invention has utility. They designate use rather than structure, form or composition.”).

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 1. Therefore, we affirm the rejection of claim 1 and of claims 3-10, which fall therewith.

IV. CLAIMS 11-13

As set forth above, we select claim 11 as the sole claim on which to decide the appeal of the second group.

Appellants argue that “*Smaha* ‘converts the input into events/signature and compare[s] it with the known signatures’ (Final Office Action, page 4, and page 11)” (App. Br. 7) but fails to disclose “an intrusion protection system management application . . . operable to receive text-file input defining a network-exploit rule and convert the text-file input into a signature file comprising machine-readable logic representative of an exploit-signature” (*id.* 8). Appellants also argue that “*Smaha* clearly do not ‘defin[e] a network exploit rule’ as recited by Claim 11” (*id.*).

Smaha discloses “an intrusion misuse detection” system (col. 3, ll. 31-32) in which a “load mechanism 102 receives selectable misuse data” (col. 8, ll. 11-12). The “load mechanism 102 loads the misuse elements to signature data structure 108” (col. 8, ll. 17-18), the signature data structure 108 “containing elements . . . (that) embody a computer representation of a misuse (i.e., a signature data structure 108)” (col. 8, ll. 30-35). We disagree with Appellants that Smaha fails to disclose the disputed limitations of claim 11. Specifically, Smaha discloses “an intrusion protection system” (i.e., an “intrusion misuse detection” system) that is operable to “receive a text-file input” (i.e., receiving “misuse data” at a “load mechanism”) that defines a network-exploit rule (i.e., the “misuse data” defines misuse or intrusion of the system). Smaha further discloses converting the input into a signature file (i.e., loading misuse elements to a signature data structure) that comprises machine-readable logic of an exploit-signature (i.e., the signature data structure that embodies a computer representation of a misuse). “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d at 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). Appellants have failed to establish substantial differences between the Smaha disclosure and the disputed elements of claim 11.

Appellants further argue that “nowhere does *Smaha* disclose, teach or suggest a mobile device” (App. Br. 9).

As set forth above, in the absence of an explicit definition of “mobile device” in the Specification, we construe the term using the plain and

ordinary meaning of “any device that can be moved.” Smaha discloses a “network device” and “computer memory device” (col. 4, ll. 54-55). We find that any of these devices encompass devices that are capable of being moved. Therefore, we disagree with Appellants that Smaha fails to disclose a mobile device.

Appellants also argue that Smaha discloses “an output of ‘an output signal’ and an ‘output report,’ neither of which appear to be a ‘signature file’ as recited by claim 11” (App. Br. 9).

For reasons set forth *supra*, we disagree with Appellants that Smaha fails to disclose a “signature file.”

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 11. Therefore, we affirm the rejection of claim 11 and of claims 12 and 13, which fall therewith.

V. CLAIM 2

Appellants argue that Kouznetsov and Holland fail to disclose “‘an intrusion detection application stored in the memory module’ of a ‘mobile device operable in a mobile telecommunications network’” (Reply Br. 6). However, Appellants rely on the same arguments as those presented for claim 1 with respect to Kouznetsov. For reasons set forth above for claim 1, we are unconvinced by Appellants’ arguments.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 2.

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VII. ORDER

In summary, the rejection of claims 1 and 3-10 under § 102(e) is affirmed and the rejections of claims 2 and 11-13 under § 103(a) are affirmed.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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